

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

S.A.No.252 OF 2005 & S.A.No.108 OF 2006

COMMON JUDGMENT:

1 The unsuccessful plaintiffs filed these two appeals challenging the decree and judgment dated 17.09.2004 passed in A.S.No.104 of 2001 and A.S.No.105 of 2001 on the file of the IV Additional District Judge, Warangal, where under and whereby the common judgment and decree dated 04.06.2001 passed in O.S.No.216 of 1997 and O.S.No.94 of 1997 respectively on the file of the Principal Junior Civil Judge, Warangal was confirmed.

2 Since both the appeals arise out of the common judgment passed by the trial Court as well as the appellate Court, these two appeals are also disposed of by this common judgment.

3 For the sake of convenience, parties in both the appeals will hereinafter be referred to as they are arrayed before the trial Court.

4 The case of the plaintiffs in O.S.No.94 of 1997 is that they are own brothers and owners of house bearing D.No.5/815 and 5/816 situated in Lashkar Bazar, Kishanpura, Hanamkonda. They had dismantled their old house and constructed a new house in that place for which the defendants have approved the plan and granted permission on 20.12.1995 and a revised plan was also issued on 11.03.1996. The plaintiffs have obtained permission vide permission No.84 dated 04.04.1996 and constructed their house as per the approved plan and completed the construction of the ground floor by the end of June 1996. It is stated that in the month of December 1996 the plaintiffs have removed the wooden doors as it is facing the main road and erected shutters keeping in view of more safety and to avoid breaking of doors in any untoward incident and continued to stay in the said premises. On 06.02.1997, the Building Inspector of

Municipal Corporation visited the spot and threatened the plaintiffs that fixing of shutters amounts to deviation and require fresh permission and directed to remove the shutters and dismantle the front portion of the house. The plaintiffs submitted a representation, but the Municipal Corporation, even after receiving the said representation, tried to remove the shutters and dismantle the front portion of the house. The Building Inspector of the defendant Corporation has once again visited the house on 10.02.1997 along with municipal staff and tried to damage the suit property without any notice. Hence the suit.

5 The defendant-Corporation filed written statement inter alia contending that while applying for permission, the plaintiffs have submitted an undertaking agreeing to leave the road affected area and set back area as per master plan on the South of the suit schedule property. However, they have constructed the building without leaving the said area as per their undertaking. In fact, the permission, which was granted in favour of the plaintiffs is subject to the plaintiffs leaving the road and set backs. The plaintiffs have altered the ground floor into a commercial complex. They have removed the doors and fixed shutters without obtaining prior permission from the Municipal Corporation. Any deviation from the sanctioned plan and conversion of the nature of house amounts to violation of the building rules and the plaintiffs are liable to get the deviation regularised as per law. The defendant issued notice dated 25.04.1996 to the plaintiffs not to construct the building in deviation to the sanctioned plan. But, the plaintiffs, unmindful of the said notice, have deviated from the sanctioned plan and completed the construction. Though the Municipal Corporation had issued a notice to the plaintiffs, they have filed the suit to stall the proceedings. If there is any deviation, the Corporation has every right to demolish the

structures. Therefore, the suit is liable to be dismissed.

6 Basing on the above pleadings, the trial Court framed the following issues for trial:

- i. Whether the plaintiffs are entitled for permanent injunction as prayed for?
- ii. To what relief?

7 While the suit in O.S.No.94 of 1997 was pending before the Court, the plaintiffs have filed another suit O.S.No.216 of 1997 against the Kakatiya Urban Development Authority. The case of the plaintiffs in O.S.No.216 of 1997 is that the plaintiffs are own brothers and owners of house bearing D.No.5/815 and 5/816 situated in Lashkar Bazar, Kishanpura, Hanamkonda. The plaintiffs constructed a new house in the place of their old house by obtaining permission from the Municipal Corporation, Warangal on 20.12.1995. The plaintiffs submitted a revised plan on 13.11.1996 vide permission No.84, dated 04.04.1996. The plaintiffs have completed the entire construction by the end of June 1996. They have removed the wooden doors in the month of December 1996 as it is facing the main road and fixed shutters keeping in view of more safety and to avoid breaking of doors in any untoward incident and they continued to stay in the said premises. On 24.02.1997 the officials of the Kakatiya Urban Development Authority issued a show cause notice stating that replacement of shutters in place of wooden doors is violation of Zoning Regulations and directed the plaintiffs to submit their explanation within five days. The plaintiffs submitted their explanation stating that the replacement of shutters does not amount to violation of Zoning Regulations. The defendants without considering the legal aspects and in a routine manner, have issued the confirmation order / notice on 25.02.1997 even before receiving the explanation of the plaintiffs directing the plaintiffs to remove the shutters within five

days, failing which, the shutters will be removed at the cost of the plaintiffs. The confirmation notice dated 25.02.1997 is against to the principles of natural justice and is without jurisdiction. Fixation of iron shutters would not amount to violation of provisions of the Municipal Corporation Act or Urban Development Act. The provisional notice as well as the final notices are totally illegal and misconceived. The officials of the defendants on 09.03.1997 have visited the suit house along with their staff and tried to damage the shutters. When the plaintiffs have shown the injunction order issued against the Municipal Corporation, the officials of the defendant left the place. Hence the suit to declare the confirmation order / notice dated 25.02.1997 as null and void and without jurisdiction.

8 The defendant filed written statement inter alia contending that the plaintiffs constructed the house in violation of the Zoning Regulations. Though the plaintiffs obtained permission for construction of the house for residential purpose, they altered the construction for the purpose of commercial activity and they let out the mulgies to various persons for commercial purpose. The interim injunction granted in I.A.No.153 of 1997 in O.S.No.94 of 1997 is not binding on this defendant as this defendant is not a party to the suit and a duty is caste on this defendant to control haphazard growth in view of section 13 (5) of Andhra Pradesh Urban Areas (Dev.) Act 1975 and no development shall be carried unless such development is in accordance with the sanctioned plan. The plaintiffs have violated the procedure contemplated under Section 15 of the said Act.

The plaintiffs have constructed a commercial complex in contravention of the master plan and sanctioned plan.

9 It is further stated in the written statement that on 26.02.1997, the defendants received a representation from the plaintiffs. This defendant has given an opportunity to the plaintiffs for regularisation

of the construction as per G.O.Ms.No.360 (M.A.) Department, dated 06.02.1996. The plaintiffs themselves have submitted a representation stating that they deviated the permission and sanctioned plan issued by the defendant. This defendant got powers to dismantle the constructions made in contravention of Zoning Regulations. This defendant never tried to dismantle the suit schedule property and requested the plaintiffs for payment of fee and penal charges as per the rules. Hence the suit may be dismissed.

10 Basing on the above pleadings, the trial Court framed the following issues for trial:

- i. Whether the plaintiffs are entitled to the declaration as prayed for?
- ii. Whether the plaintiffs are entitled for permanent injunction as prayed for?
- iii. To what relief?

11 Though initially the trial Court has settled separate issues for trial in each suit, however, the trial Court clubbed both the suits and framed the following issues for common trial:

- a. Whether the plaintiffs are entitled for declaration as prayed for?
- b. Whether the plaintiffs are entitled for permanent injunction to restrain the Municipal Corporation and KUDA from interfering with their possession and from causing any damage to the shutters of the suit house?
- c. To what relief?

12 During the course of trial, on behalf of the plaintiffs P.Ws.1 to 3 were examined and Exs.A.1 to A.11 were marked. On behalf of the defendants D.W.1 was examined and Exs.B.1 to B.9 were marked.

13 Basing on the oral and documentary evidence and other material available on record, the trial Court dismissed both the suits

by common judgment and decree dated 04.06.2001. Aggrieved by the same, the plaintiffs preferred A.S.No.105 of 2001 and 104 of 2001 respectively before the learned IV Additional District Judge, Warangal, which were dismissed by a common judgment and decree dated 17.09.2004. Aggrieved by the same, the unsuccessful plaintiffs have preferred these two second appeals.

14 The substantial question of law involved in these two second appeals is

“Whether the KUDA had issued Exs.A.3 and A.5 notices in violation of the provisions of 42, 43, 31 and 53 of the Urban Development Authority Act?”

15 Heard Sri Ch. Purnachandra Rao, the learned counsel for the plaintiffs and Sri V. Vishweshwar Reddy, the learned standing counsel for the Kakatiya Urban Development Authority and Sri C.V.Bhaskar Reddy, the learned standing counsel for Municipal Corporation, Warangal.

16 To substantiate their case, the 2nd plaintiff examined himself as P.W.1 and got marked Exs.A.1 to A.11. P.W.2 is the neighbour of P.W.1 and P.W.3 is mason. To dislodge the case of the plaintiffs, the Junior Planning Officer of KUDA examined himself as D.W.1 and got marked Exs.B.1 to B.9.

17 The predominant contention of the learned counsel for the plaintiffs is two fold viz., 1) The plaintiffs constructed the house as per the plan approved by the Municipal Corporation, Warangal and 2) Kakatiya Urban Development Authority has issued Exs.A.3 and A.5 notices in violation of the provisions of the Urban Development Act, 1975.

18 The contention of the learned standing counsel for the Warangal Municipal Corporation as well as the Kakatiya Urban Development

Authority is that the plaintiffs constructed mulgies without obtaining prior permission from the authorities concerned.

19 The admitted facts that emerge from the pleadings and oral testimony of the witnesses are that the plaintiffs are the owners of the house bearing No.5/815 and 5/816 situated in Lashkar Bazar, Kishanpura, Hanamkonda. The plaintiffs demolished the old house and obtained permission for construction of new house from the Municipal Corporation, Warangal under Ex.A.1, dated 04.04.1996. Ex.A.2 is the plan approved by the Municipal Corporation. Plaintiffs have removed the wooden doors in the ground floor and fixed shutters in place of wooden doors.

20 As seen from the testimony of P.W.1, plaintiffs obtained permission for construction of a residential house. The testimony of P.W.3 reveals that the plaintiffs removed the wooden doors and fixed shutters and converted the ground floor into eight mulgies. The testimony of D.W.1 (Junior Planning Officer of KUDA) reveals that the plaintiffs fixed two shutters outside and six shutters inside the ground floor. The fact remains that the plaintiffs constructed eight mulgies by fixing shutters in the ground floor. Ex.A.6 to A.11 photos filed by the plaintiffs and Ex.B.7 to B.9 photos filed by the defendants clearly establishes the alterations made by the plaintiffs. As seen from Exs.A.1 and A.2, the suit schedule property is situated in a residential locality and the plaintiffs obtained permission for construction of a residential house only.

21 The crucial question that falls for consideration is whether the plaintiffs are entitled to convert the ground floor into mulgies without obtaining prior permission from the Municipal Corporation, Warangal and Kakatiya Urban Development Authority, or not?

22 A perusal of Ex.A.3 reveals that P.W.1 submitted a

representation on 14.02.1997 to the Kakatiya Urban Development Authority. A perusal of Ex.B.4 also reveals that the plaintiffs submitted a representation to the Kakatiya Urban Development Authority along with revised plan Ex.B.5 and Ex.B.6 Master Plan. The relevant portion in Ex.B.4 is extracted here under:

“There are little deviations. We replaced the wooden doors with shutters. Hence I am submitting the revised plan with existing shutters.”

23 So from the above portion in Ex.B.4 it is manifest that the plaintiffs themselves submitted a revised plan admitting that they have deviated from the original plan in constructing the house and further stating that they have fixed the shutters in place of wooden doors in contravention of the sanctioned permission and approved plan under Exs.A.1 and A.2 respectively.

24 The Kakatiya Urban Development Authority issued Ex.A.5 notice on 20.02.1997 directing the plaintiffs not to make further constructions and also to apply for regularisation of the said construction as per G.O.Ms.No.360 (M.A.) Dated 22.07.1996. The predominant contention of the learned counsel for the plaintiffs is that KUDA has issued Ex.A.5 notice without giving reasonable opportunity as contemplated under Sections 42 and 43 of the Urban Development Act, 1975. There is no doubt that Kakatiya Urban Development Authority has no right whatsoever to issue notice under Sections 42 and 43 of the Urban Development Act, 1975 without giving a reasonable time to the plaintiffs. However, in Ex.A.5 it is clearly mentioned that if no satisfactory reply is received **within five days from the date of issue of this notice**, an order will be made to remove the said construction by demolition and the cost of demolition will be received as arrears of land revenue as required under Section 42 of Andhra Pradesh Urban Areas (Dev) Act 1975 from the person

who has made the unauthorised constructions.

25 A perusal of the above notice reveals that KUDA has given only five days time. At this juncture, this Court places reliance on the decision of this Court in **B. Shivaji and another Vs. Visakhapatnam Urban Development Authority**^[1]. As per the principle enunciated in the above case, the Urban Development Authority has to issue a notice by giving not less than five days and not more than fifteen days from the date on which a copy of the order of removal is made. In view of the above proposition of law, the contention of the learned counsel for the plaintiffs that Ex.A5 was issued in violation of the principles of natural justice is incongruous, more so, it is factually incorrect and legally untenable.

26 In the light of the foregoing discussion, I have no hesitation to hold that the Kakatiya Urban Development Authority had issued notice strictly adhering to the procedure contemplated under Sections 42 and 43 of the Andhra Pradesh Urban Areas (Dev) Act 1975.

27 The plaintiffs submitted an explanation dated 26.02.1997 to the Vice Chairman of Kakatiya Urban Development Authority, Warangal. For better appreciation of the rival contentions, the relevant portion in Ex.A.4 is extracted hereunder:

“.....However, if the replacement of wooden doors with the shutters is required any permission, I am ready to submit the revised plan and ready to deposit the necessary charges. At present there is no construction and the construction has been completed long back and we are residing peacefully.” (underlining mine)

28 From a perusal of Ex.A.4 it is manifestly clear that the plaintiffs have agreed to pay the necessary charges for regularisation of the unauthorised construction. Ex.B.1-G.O.Ms.No.360 (M.A) Department, dated 06.02.1996 and Ex.B.2-G.O.Ms.No.313 (M.A) Department dated 11.05.1993 enable the violators to seek regularisation of their

unauthorised constructions through Municipal Corporations or Urban Development Authorities concerned.

29 Basing on the representations of the plaintiffs, the KUDA issued proceedings dated 19.03.1997 directing the plaintiffs to pay an amount of Rs.5,75,682/- towards penal amount for regularisation of the unauthorised constructions made by them. The interesting aspect in this case is that the plaintiffs themselves agreed to pay the charges for regularisation of the unauthorised construction made by them. Basing on the representation of the plaintiffs only, the KUDA had issued Ex.B.3 proceedings dated 19.03.1997. But for the reasons best known to the plaintiffs, they have not challenged the validity of the said notice issued by KUDA under Ex.B.3 all these years. Therefore, the proceedings dated 19.03.1997 issued by KUDA remains valid unless and until the same is set aside by the competent authority.

30 The crucial question that falls for consideration at this juncture is whether the plaintiffs are entitled to file a civil suit challenging the notice issued under Section 42 of the A.P. Urban Areas Development Act, 1975. On this aspect, this Court places reliance on the decision of this Court reported in **Kalyani Industries, Golapur (V), Hanamkonda Mandal, Warangal District Vs. General Manager, District Industries Centre, Warangal Dist. And Ors.** [\[2\]](#)

“Therefore, whenever such properly situates within the development area declared under the Act, it is mandatory under Section 14 of the Act that every person or body including a department of the Government desiring to obtain the permission referred to in Section 13 shall make an application in writing to the authority in such form and containing such particulars in respect of the development to which the applications relates as may be determined by regulations. Such a permission has to be mandatorily obtained in accordance with Section 13(4) of the Act. The ground on which the impugned proceedings are passed by the Development Authority is that the petitioner has not obtained such an approval. Rightly, the petitioner is not able to produce any material to show that such an approval has been objected by the authority nor it is the

contention of the petitioner that such an approval has been obtained. Therefore, the impugned orders, as pointed out by Mr. Naik, learned advocate for the Development Authority, have been passed under Section 42 of the Act. In such a situation Section 42(3) of the Act provides an appeal to any person aggrieved by the order under Section 42(1) of the Act to be preferred to the Vice Chairman of the Authority within thirty days from the date of the order and the Vice Chairman may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order. As already pointed out, as in the case of the impugned order of the Board, the order of the Development Authority also involves question of facts to be investigated, in the first place, whether the property situates within the development area, secondly whether any permission was obtained by the petitioner and thirdly whether he has violated any provisions of the Act etc. Therefore in this case also, it is appropriate that the petitioner should exhaust the remedy under Section 42(3) of the Act and not expected to get any relief in this petition.”

31 As per the principle enunciated in the above case, the plaintiffs ought to have filed an appeal before the competent authority i.e. Vice Chairman of KUDA, challenging the Exs.A.3 and A.5 notices. It is the settled principle of law that when the Act provides an efficacious alternative remedy, the aggrieved party has to approach the authorities concerned. After exhausting the remedies only, the aggrieved party can approach the competent civil Court. In the present case, the plaintiffs, without exhausting such alternative remedy available under the Act, filed the above suit for a declaration to declare the notices issued under Exs.A.3 and A.5 are null and void.

32 In the light of the foregoing discussion, I have no hesitation to hold that the suit filed against the Kakatiya Urban Development Authority is not maintainable. The Courts below have concurrently held that the plaintiffs are not entitled to the relief of declaration against the Kakatiya Urban Development Authority. The Courts below have assigned cogent and valid reasons for coming to such a conclusion. Therefore, viewed from any angle i.e. either on facts or legal aspects, the suit in O.S.No.216 of 1996 is not maintainable under law.

33 As per Ex.A.1 sanction proceedings and Ex.A.2 plan, plaintiffs have to leave set backs more particularly on the Southern side of the building. The material placed before the Court clinchingly establishes that the plaintiffs have constructed the house without leaving the set backs as per Ex.A.2 plan. It is needless to say that no one is entitled to make constructions in the municipal Corporation area without leaving set backs as per the provisions of the Municipal Corporation Act. It is a settled principle of law that a person who seeks equitable relief, must come to the Court with clean hands. In the instant case, the plaintiffs have not approached the Court with clean hands. The person who has blatantly violated the provisions of the Municipal Corporation Act is not entitled to seek injunction against the Municipal Corporation. If the Courts grant injunction in this type of matters, it will not be possible for the Municipal Corporations to control or prevent the unauthorised constructions. Here, in this case, the plaintiffs themselves have admitted that there are deviations in making the construction. Therefore, I am of the considered opinion that it is not a fit case to grant equitable relief of perpetual injunction in favour of the plaintiffs. On this aspect also, the Courts below have considered the material available on record in right perspective and arrived at a conclusion that the plaintiffs are not entitled to the relief of perpetual injunction in view of making constructions in violation of Ex.A.2 approved plan.

34 As no question of law much less substantial question of law arises for consideration and as the first appellate Court did not commit any error in confirming the finding of the trial Court, I find no merits in these two second appeals and hence these second appeals are dismissed as devoid of merit. No order as to costs. As a sequel, miscellaneous applications, if any pending, shall stand closed. However, it is made clear that dismissal of these second

appeals does not preclude the plaintiffs to approach the authorities concerned for regularisation of their unauthorised constructions, if they are so advised.

T. SUNIL CHOWDARY, J.

Date:04-02-2014.

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[\[1\]](#) 1992 (2) ALT 142

[\[2\]](#) 1998 (1) ALD 505